No. 15911

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BILL WILLIAM PROHOROFF,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

LAUGHLIN E. WATERS,
United States Attorney,

LLOYD F. DUNN,
Assistant U. S. Attorney,
Chief, Criminal Division,

THOMAS R. SHERIDAN,
Assistant U. S. Attorney,

600 Federal Building,
Los Angeles 12, California,

Attorneys for Appellee.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Codes

No. 15911

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BILL WILLIAM PROHOROFF,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

I.
JURISDICTION.

Appellant was indicted by the Federal Grand Jury in and for the Southern District of California on October 9, 1957, under Section 462 of Title 50, United States Code, Appendix, for knowingly refusing and failing to report for induction into the Armed Forces of the United States as ordered to do. [Tr. 3-4.]

After the appellant was arraigned and pleaded not guilty, the appellant was tried in the United States District Court for the Southern District of California, Northern Division, before the Honorable Gilbert H. Jertberg without a jury on December 30, 1957, and at the close of evidence and argument Judge Jertberg found the defendant guilty as charged. [Tr. 9-39.]

On January 20, 1958, appellant was sentenced to the custody of the Attorney General for imprisonment for a period of six months. [Tr. 5-6.]

The District Court had jurisdiction of the cause of action under 50 U. S. C., Appendix 462, and 18 U. S. C., 3231.

II.
STATUTE INVOLVED.

The Indictment in this case was brought under Section 462 of Title 50, Appendix, United States Code, which provides in pertinent part:

> "(a) Any . . . person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-470 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment. . . ."

III.
STATEMENT OF THE CASE.

The Indictment returned on October 9, 1957 charges that the appellant was duly registered with Local Board No. 71 in Fresno, California; he was classified I-A; he was ordered to report for induction into the Armed Forces of the United States on October 12, 1956 in Fresno, California; and at that time and place he knowingly failed and neglected to report for induction into the Armed

Forces of the United States as so notified and ordered to do. [Tr. 3-4.]

After arraignment and a plea of not guilty, the appellant was tried before Honorable Gilbert H. Jertberg without a jury on December 30, 1957, at which time he was found guilty as charged in the Indictment. [Tr. 9-39.]

On January 20, 1958, appellant was sentenced to the custody of the Attorney General for imprisonment for a period of six months. [Tr. 5-6.]

Appellant assigns as error the Judgment of conviction on the following grounds:

(1) The District Court erred in failing to grant the Motion for Judgment of Acquittal;

(2) The District Court erred in convicting the appellant and entering a judgment of guilty against him. (App. Br. p. 5.)

IV.
STATEMENT OF THE FACTS.

December 30, 1952, appellant registered with Local Board 71 in Fresno, California. [Ex. 1, 2.]*

February 24, 1953, appellant wrote to Board 71 stating that there was no reason for him to fill out the Classification Questionnaire as he would not take part in any war. [Ex. 16.]

March 5, 1953, appellant returned to Board 71 his Classification Questionnaire (SSS Form 100) in which it appears that he signed Series XIV indicating he had

---

*Ex. refers to Government's Exhibit 1: The Appellant's Selective Service file.

conscientious objection to war, and then scratched out his signature. [Ex. 7-13.]

March 5, 1953, appellant returned the notarized affidavit of dependency (SSS Form C-95) which Board 71 had mailed to him. [Ex. 17-18.]

March 12, 1953, appellant classified I-A by a vote of two to nothing by Board 71. [Ex. 14.]

March 13, 1953, appellant notified (SSS Form 110) of his I-A classification. [Ex. 14.]

April 2, 1953, appellant ordered to report for his pre-induction physical examination (SSS Form 223) at Fresno, California on April 17, 1953. [Ex. 20.]

April 17, 1953, appellant failed to report for his pre-induction physical examination as ordered. [Ex. 14, 31.]

April 29, 1953, Board 71 wrote to the individual that appellant had indicated would always know his (appellant's) address requesting appellant's present address which was furnished on May 4, 1953. [Ex. 29-30.]

May 5, 1953, Board 71 wrote to appellant advising him to either report immediately to Board 71 or request a transfer to the board nearest to his new address in order to comply with the order to take his pre-induction physical examination. [Ex. 31.]

May 19, 1953, Board 71 wrote to appellant's father requesting him to furnish the appellant's present address. [Ex. 33.]

June 4, 1953, Board 71 voted two to nothing to order appellant to report for immediate induction as a delinquent. [Ex. 14.]

June 9, 1953, Board 71 ordered appellant to report for induction (SSS Form 252) as a delinquent on June 19, 1953 in Fresno, California. [Ex. 34.]

June 19, 1953, appellant failed to report for induction as ordered. [Ex. 14.]

June 26, 1953, Board 71 reported appellant to the United States Attorney, Los Angeles, California as a delinquent. [Ex. 35-36.]

December 14, 1953, the United States Attorney after reviewing appellant's file returned the case to Board 71 for further action on the grounds that it appeared from the file that appellant may have indicated he had conscientious objections to war and should be given the opportunity to state his position. [Ex. 44.]

December 17, 1953, Board 71 mailed appellant Special Form for Conscientious Objector (SSS Form 150.) [Ex. 46-49.]

December 23, 1953, Board 71's letter of December 17, 1953 was returned to Board 71 by the Post Office marked "Gone—no address". [Ex. 50.]

December 24, 1953, Board 71 wrote to the individual that appellant had indicated would always know his (appellant's) address requesting appellant's present address, and this letter was returned by the Post Office marked: "Person unknown". [Ex. 51-52.]

January 14, 1954, Board 71 wrote to appellant's father requesting appellant's present address. [Ex. 53.]

January 21, 1954, appellant sent Board 71 his new address. [Ex. 54.]

January 28, 1954, Board 71 sent Special Form for Conscientious Objector (SSS Form 150) to appellant. [Ex. 14.]

January 28, 1954, Board 71 ordered appellant to report for his pre-induction physical examination (SSS Form 223) on February 4, 1954, at Fresno, California. [Ex. 55.]

February 4, 1954, appellant failed to report for his pre-induction physical examination as ordered. [Ex. 14.]

February 12, 1954, Board 71 received a letter from appellant in which he states he wants nothing to do with the armed forces, and that he and his people are planning to leave the United States. [Ex. 56.]

February 18, 1954, appellant classified I-A by Board 71 by a vote of three to nothing. [Ex. 14.]

February 19, 1954, appellant notified (SSS Form 110) of his I-A classification. [Ex. 14.]

August 13, 1954, Board 71 ordered appellant to report his pre-induction physical examination (SSS Form 223) on August 20, 1954 at Fresno, California. [Ex. 58.]

August 20, 1954, appellant failed to report for his pre-induction physical examination as ordered. [Ex. 14.]

November 18, 1954, Board 71 voted three to nothing to order appellant to report for induction as a delinquent. [Ex. 15.]

January 25, 1955, Board 71 ordered appellant to report for induction into the armed forces on February 14, 1955 at Fresno, California. [Ex. 60.]

February 14, 1955, appellant failed to report for induction as ordered. [Ex. 15.]

April 29, 1955, Board 71 reported appellant to the United States Attorney in Los Angeles, California, as a delinquent. [Ex. 61-62.]

August 4, 1955, appellant personally appeared at Board 71 and requested "Special Form for Conscientious Objector (SSS Form 150)" which was handed to him and completed by him then and there. [Ex. 15, 63-67.]

August 17, 1955, the United States Attorney declined to prosecute appellant because he was now in touch with his local board. [Ex. 68.]

September 15, 1955, Board 71 by a vote of two to nothing reopened appellant's classification and classified him I-A. [Ex. 15.]

September 16, 1955, Board 71 notified appellant (SSS Form 110) of his I-A classification. [Ex. 15.]

January 9, 1956, Board 71 ordered appellant to report for his pre-induction physical examination (SSS Form 223) on January 19, 1956 at Fresno, California. [Ex. 69.]

January 24, 1956, Board 71 mailed appellant a Certificate of Acceptability (SSS Form DD62) certifying that as a result of the physical examination he took on January 19, 1956 he was found fully acceptable for induction into the armed forces. [Ex. 70.] This letter was returned to Board 71 by the Post Office on January 30, 1956. [Ex. 96.]

January 31, 1956, Board 71 wrote to the individual that appellant indicated would always know his (appellant's) address requesting appellant's present address. [Ex. 97.]

February 3, 1956, Board 71 telephoned appellant's father requesting appellant's present address. [Ex. 98.]

February 8, 1956, Board 71 wrote to appellant's father requesting appellant's present address which was furnished to Board 71 on February 15, 1956. [Ex. 99.]

February 21, 1956, Board 71 remailed the Certificate of Acceptability (SSS Form DD62) to appellant. [Ex. 15, 96.]

August 13, 1956, Board 71 mailed appellant a Dependency Questionnaire (SSS Form 118) which appellant returned to Board 71 on August 21, 1956, and in which he indicated that no one was dependent upon him. [Ex. 101-104.]

September 6, 1956, Board 71 reviewed appellant's case and voted three to nothing for no change. [Ex. 15.]

September 19, 1956, Board 71 ordered appellant to report for induction into the Armed Forces of the United States (SSS Form 252) on October 12, 1956 at Fresno, California. [Ex. 105.]

October 12, 1956, appellant failed to report for induction as ordered. [Ex. 15.]

V.
ARGUMENT.
POINT ONE.

Appellant Was Not Entitled to Judicial Review of His I-A Classification Because He Failed to Exhaust His Administrative Remedies.

As seen from the statement of facts given above the appellant did not appeal from the last I-A classification given to him by his local board on September 15, 1955, and he did not report to the induction center for induction into the Armed Forces of the United States on October 12, 1956, as ordered. Failure to either appeal the last classification or report to the induction center when ordered to report for induction is a failure to exhause administrative remedies.

Falbo v. United States, 320 U. S. 549, 64 S. Ct. 346 (1944);

Billings v. Truesdell, 321 U. S. 542, 64 S. Ct. 737 (1944);

Olinger v. Patridge, 196 F. 2d 986 (9th Cir. 1952);

Williams v. United States, 203 F. 2d 85 (9th Cir. 1953);

Rowland v. United States, 207 F. 2d 621 (9th Cir. 1953);

Skinner v. United States, 215 F. 2d 767 (9th Cir. 1954);

Kalpakoff v. United States, 217 F. 2d 748 (9th Cir. 1954);

Francy v. United States, 217 F. 2d 750 (9th Cir. 1954);

Mason v. United States, 218 F. 2d 375 (9th Cir. 1955);

Kaline v. United States, 235 F. 2d 54 (9th Cir. 1956);

Evans v. United States, 252 F. 2d 509 (9th Cir. 1958).

Appellant concedes that he did not exhaust his administrative remedies. (App. Br. p. 7.)

POINT TWO.

Appellant Is Not and Should Not Be Exempted From Exhausting His Administrative Remedies.

Appellant argues that the exhaustion of administrative remedies rule should not be applied to him. The reason given for this position appears to be that the evidence shows appellant relied on advice given to him by an F.B.I. agent, and said advice effectively "misled or lulled" appellant to the point that appellant did not appeal. Of course this does not explain why appellant did not report to the induction center.

The appellee opposes this argument on the following grounds:

(1) There is no evidence that appellant was ever advised by any F.B.I. agent at any time.

(2) This defense is raised for the first time on appeal.

(3) Assuming an F.B.I. agent did advise appellant, and this issue was properly raised in the trial court, it still would not be grounds to prohibit the application of the rule of exhaustion of administrative remedies to appellant.

This case was tried and decided on December 30, 1957. Appellant's defenses appear in his Motion for Judgment of Acquittal. [Tr. 4-5.] Appellant did not testify at the trial of this case in the District Court. At no time prior to or during the trial was there ever any testimony, evidence, motions, or stipulations that even remotely pertain to any conversations between appellant and an F.B.I. agent. At the conclusion of the trial on December 30, 1957, appellant was found guilty.

On January 20, 1958, appellant appeared before the trial court for sentence. [Tr. 39.] After the court heard from counsel and just prior to imposing sentence, the court asked if appellant had anything to say. [Tr. 43.] At this time, appellant, while not under oath, told the court his interpretation and recollection of purported conversations he had with F.B.I. agents at different times between December 1952, and December 1956. The Government was unprepared and thus unable to rebut these statements at the time. Of course these statements are not evidence and were not offered by appellant as evidence. It is equally clear at this point that this matter is being raised for the first time on appeal, and hence, should be disregarded by this Court.

Let us assume this defense was raised at the time of trial, and let us further assume that an F.B.I. agent had advised appellant along the lines appellant claims [Tr. 43-48], and that appellant had relied on this advice. Even then appellant's position is untenable. Appellant's argument is that the agent advised him correctly as far as he went but did not advise him completely as he did not tell appellant that appellant could appeal his classification. (App. Br. pp. 12-13.) Appellant admits receipt of Notices of Classification (SSS Form 110), or as

appellant calls them "standard post-card notices", each of which clearly states that he has ten days in which to appeal his classification. (App. Br. pp. 11, 13.) [Tr. 46.] On three separate occasions such notices were sent to appellant: in 1953, 1954 and 1955. [Ex. 14-15.]

Apparently all of these alleged conversations with an F.B.I. agent took place prior to August 4, 1955, which is the date appellant went to Board 71, obtained a Special Form For Conscientious Objector (SSS Form 150), completed it, and left it with Board 71. [Tr. 43-48, 64.] While at the Board appellant did not inquire as to his rights to appeal his classification. After this visit to Board 71, appellant's classification was reopened by Board 71, he was again classified I-A, and he was sent a notice of his classification (SSS Form 110) which advised him he had ten days in which to appeal the classification. [Ex. 15.] It appears then that the agent purportedly did not tell appellant be could appeal (and it is not even claimed that the agent told appellant he could *not* appeal or need *not* appeal), and that Board 71 notified appellant three times of his right to appeal, and at least one such notice was sent appellant after the last conversation appellant allegedly had with the agent. Yet appellant argues he relied on what the agent told him. Obviously, what is meant is that appellant relied on what the agent did not tell him while choosing to disregard the Board's information. Although we do not know of any situation where a registrant should be exempted from the necessity of exhausting his administrative remedies, and we know of no appellate decisions allowing such an exemption, it is clear that appellant herein should not be so exempted.

This Court in *Evans v. United States*, 252 F. 2d 509 (1958), was urged by this same defense counsel to exempt *Evans* from the exhaustion of administrative remedies rule, and the Court while affirming the conviction stated:

> "Appellant recognizes the burden he has here in view of the 'exhaustion of remedies' rule and our holdings applying it in selective service cases (footnote 2), but he urges upon us that the doctrine is not inflexible and may be relaxed by courts in proper places. Assuming the correctness of this contention, we doubt that we should be anxious to relax the rule in this case where appellant makes no claim that he was not aware of his rights to appeal but instead admits that the document bringing him notice of the classification also notified him of his right to take an appeal from the classification within ten days."

POINT THREE.

There Is a Basis in Fact for Appellant's Classification.

If the court holds that appellant had to exhaust his administrative remedies then this point is of course moot and need not be considered.

32 C. F. R. 1622.1(c) provides:

> "It is the local board's responsibility to decide, subject to appeal, the class in which each registrant shall be placed. Each registrant will be considered as available for military service until his eligibility for deferment or exemption from military service is clearly established to the satisfaction of the local board. . . ."

It is apparent from the foregoing regulation that the burden was on appellant to establish his exemption from

military service. *Gaston v. United States,* 222 F. 2d 818 (4th Cir. 1955). The controlling case as to whether or not appellant satisfied this burden and whether or not there was a basis in fact for the board's classification is *Witmer v. United States,* 348 U. S. 375 (1955). In that case the Supreme Court affirmed the conviction of a registrant who had failed to submit to induction after his claim as a conscientious objector had been denied. The Court said at page 381:

> "Petitioner argues from this that there was no specific evidence herein compatible with his claimed conscientious objector status. But in Dickinson (346 U. S. 389) the registrant made out his *prima facie* case by means of objective facts—he was 'a regular or duly ordained minister in religion.' Here the registrant cannot make out a *prima facie* case from objective facts alone, because the ultimate question in conscientious objector cases is the sincerity of the registrant in objecting, on religious grounds, to participation in war in any form. In these cases, objective facts are relevant insofar as they help in determining the sincerity of the registrant in his claimed belief, purely a subjective question. In conscientious objector cases, therefore, any fact which cast doubt on the veracity of the registrant is relevant . . . in short, the nature of a registrant's *prima facie case* determines the type of evidence needed to rebut his claim."

It is clear from this language that when a registrant claims to be a conscientious objector his "sincerity" in making such a claim is controlling, and a board may look to the registrant's objective acts to determine his state of mind.

The indisputed evidence concerning appellant's course of action over a four-year period in relation to his local board is that he: failed to register on time; failed to report for a pre-induction physical examination on three different occasions; failed to report for induction on three different occasions; failed to notify the local board of his change of address on at least three different occasions; and failed to complete and return the Special Form for Conscientious Objector (SSS Form 150) which was sent to him on two occasions. In light of these objective acts any local board would be justified in doubting appellant's sincerity.

The appellant states in his brief (p. 7) that appellant's conduct is susceptible of the view that appellant is a "slacker", and that the local board found him to be an "evader" (p. 6). Yet appellant would argue these appellations are consistent with religious sincerity. We contend that such an argument overlooks the meaning of the words when the objective to be determined is whether or not appellant is "sincere". And even if appellant's counsel can manipulate these appellations and the appellant's objective acts in such a fashion as to demonstrate that it is conceivable that someone could hold these appellations and objective acts consistent with a sincere claim of conscientious objector status, it is still apparent that the local board was in fact justified in concluding that appellant was insincere and thus not entitled to a I-O or I-AO classification. Appellant has the burden of establishing his sincerity, and there is no evidence of any kind which indicates he sustained this burden.

Appellee does not intend to discuss at length the scope of judicial review of the board's classification. It has long been settled:

> "That the Courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. Decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."
>
> *Estep v. United States,* 327 U. S. 114, 66 S. Ct. 423 (1946).

POINT FOUR.

The Geographical Jurisdiction of Board 71 Included Appellant's Residence Address at the Time He Registered.

There are several preliminary issues that should be determined before deciding whether or not the appellee proved that the appellant's resident's address at the time he registered was without the "geographical jurisdiction" of the ordering local board.

It is to be noted that we are not here concerned with whether or not the trial court had jurisdiction over the subject matter and/or appellant at the time of trial, which admittedly is an essential element of a criminal prosecution. This type or form of jurisdiction of the trial court is admitted and was proven at the time of trial. But, rather the issue here is the existence of "geographical jurisdiction" of the local board to act in regard to appellant.

Who has the burden of proving or disproving this "geographical jurisdiction" of a local board? Can this issue be raised at the time of trial by a registrant who did not exhaust his administrative remedies? What is the distinction if any between this so called "geographical jurisdiction" of the local board and any other kind of "jurisdiction" over the registrant the local board may have? Can this "geographical jurisdiction" be waived by a registrant?

A registrant registers with a particular local board, and then for a period in excess of four years he deals only with this same local board, during which time he never challanges the "jurisdiction" of this board. Then, when he refuses to obey an order of this local board (and not on grounds of lack of "jurisdiction"), the matter comes to trial in the District Court, and there for the first time he claims the local board he dealt with was without "geographical jurisdiction" over him.

"Geographical jurisdiction" of the local board is merely a form of jurisdiction over the person of the registrant in the local board. Admittedly, a New York draft board could not order a registrant of a California local board (absent any requests to transfer) to report for induction into the Armed Forces because it has no personal jurisdiction over such a registrant. However, it would appear that this "geographical jurisdiction" is no different than if a local board ordered a registrant to report for induction the same day it classified him I-A (and thus denied him the right to appeal the classification); and in such a situation it is said that the local board lacked "jurisdiction" to order this registrant for induction at this time.

"Jurisdiction" as used in such a situation appears to mean the same as "geographical jurisdiction" as used by appellant.

In the *Estep* case, *supra*, the Supreme Court said "The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."

This Court in the *Evans* case, *supra,* was apparently faced with a similar issue and it stated:

> "Appellant asserts that the local board lacked jurisdiction over him and, accordingly, his failure to exhaust his administrative remedies was excused. Appellant neglects to point out wherein the jurisdiction of the local board was even doubtful, much less lacking; but even if he had done so, his failure to appeal would bar his attack in the trial court on the local board's classification. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 82 L. Ed. 638, 58 S. Ct. 459; *Macauley v. Waterman S.S. Corp.,* 327 U. S. 540, 90 L. Ed. 839, 66 S. Ct. 712; *U. S. v. Sing Tuck*, 194 U. S. 161, 48 L. Ed. 917, 24 S. Ct. 621."

It appears then that if "geographical jurisdiction" is the same as the "jurisdiction" the courts referred to in the above two decisions; then appellant here cannot be heard to challenge the "jurisdiction" of Board 71.

Assuming that appellant can challenge Board 71's jurisdiction, upon whom rests the burden of proof? When appellant registered for the Selective Service System the registrar was Letha A. Starks, who was the registrar

for local boards 70 and 71. [Ex. 2.] It is conclusively shown that appellant was immediately placed in Board 71, and assigned a Selective Service Number 4-71-34-433 and this Selective Service No. indicates that appellant is a registrant in the State of California, at local board 71, was born in the year 1934, and is the 433rd man to meet the above three statistics. [Ex. 1, 2.] (32 C. F. R. 1621.2-1621.4.) The reverse side of a Registration Card has a rectangular box at the bottom below which is printed: "(Stamp of the Local Board of Jurisdiction as determined by item 2, front of card)." On the appellant's Registration Card [Ex. 2] in this box, appears the stamp of "Local Board No. 71." This factor plus the presumption of official regularity (about which we shall say more below) establishes in this case and in every Selective Service case a *prima facie* showing that the Local Board whose stamp appears on the Registration Card is the board that has jurisdiction over the owner of said Registration Card. Once this is established the burden of proving that the local board lacked jurisdiction of any kind rests upon the party that claims the board is without such jurisdiction. It is submitted then that the burden of proving the lack of jurisdiction of the Board 71 over appellant herein rests firmly on appellant; and there is no evidence that Board 71 lacked jurisdiction.

Appellant's argument appears to be as follows: (1) it is an essential element of the crime charged in this indictment to prove that Board 71 had jurisdiction over appellant [Tr. 14]; (2) the appellee attempted to prove this

element and failed because of errors in law made by the trial judge; (3) thus appellee failed to prove an essential element of the case.

Appellee opposes this argument on the following grounds:

(1) it is not an essential element of the prosecution to prove that the ordering local board lacked jurisdiction;

(2) the burden of proving a lack of jurisdiction rests with the appellant from the outset;

(3) the appellee established a *prima facie* showing that Board 71 had jurisdiction over appellant when Exhibit 1 (Appellant's Selective Service File) was duly received in evidence; and at this time the burden of proof was shifted to appellant to prove lack of jurisdiction of Board 71 over appellant, and this burden was not sustained by appellant.

(4) the physical evidence offered by appellee at the trial was properly admitted and conclusively shows that appellant's home address at the time he registered for Selective Service was within the geographical boundaries of Board's 71's territory; thus Board 71 has jurisdiction over appellant.

The first two grounds of appellee's opposition were discussed preliminarily.

The only evidence appellant introduced at the trial relevant to this issue is the testimony of Jay D. Hathaway, coordinator for the Fourth District, Selective Service System of the State of California, that there are four local boards in Fresno County, namely: 68, 69, 70, and 71.

[Tr. 11-12.] If the Court agrees with appellee that the appellant has the burden of proving lack of jurisdiction in Board 71 over appellant; then we need go no further as evidence that there are four boards in Fresno does not prove that Board 71 does not have the requisite jurisdiction.

At the trial, appellant asked the court to take judicial notice of the boundary lines of Board 71, and the court stated:

> "Well, the matter of judicial knowledge, of course, is a rather wide subject. Offhand, I don't know whether this Court can take judicial knowledge of the boundaries of the local draft boards, of their areas". [Tr. 13.]

The Court never did take judicial notice of the boundary line of Board 71; instead appellee introduced into evidence a legal description of Board 71's geographic boundaries, a large map showing the territory of all four Fresno boards, and a small map showing the boundary lines of Board 71. These three exhibits were received in evidence over appellant's objection. [Tr. 35.] Appellant claims it was error to admit these exhibits, but his claim is based on the mere assertion that there was no foundation. There is no attempt by appellant to show wherein the foundation was lacking. Appellee submits that there was a sufficient foundation laid for the admissions into evidence of these three exhibits. [Tr. 13-35.] Inasmuch as appellant does not state in detail the lack of foundation, appellee shall only briefly point out the foundation.

The foundation for Exhibit 2 in evidence was laid by Mr. Jay D. Hathaway [Tr. 15-19] and Mrs. Effie M. Ford. [Tr. 22-25.]

The foundation for Exhibits 3 and 4 in evidence was laid by Mr. Hathaway [Tr. 17, 18] and Mrs. Ford. [Tr. 25-34.]

There is one final point that is pertinent here. 32 C. F. R. 1604.54 provides:

> "Jurisdiction.—The jurisdiction of each local board shall extend to all persons registered in, or subject to registration in, the area for which it was appointed. It shall have full authority to do and perform all acts within its jurisdiction authorized by the selective service law."

32 C. F. R. 1613.12 provides in part:

> "(a) The register shall take extreme care that the place of residence of the registrant is correctly entered on line 2 of the Registration Card. The local board having jurisdiction over the place of residence entered on line 2 of the Registration Card shall always have jurisdiction over the registrant, unless otherwise directed by the Director of Selective Service. The registrar shall require the registrant to give sufficient information as to the location of the place of his residence to establish such place within the jurisdiction of a local board."

32 C. F. R. 1613.42 provides:

> "Checking Place of Residence.—When a Registration Card is received or completed at the office of a local board, the local board shall carefully check the place of residence of the registrant as indicated

on line 2 of his Registration Card to determine whether or not the place of residence is within the area of the local board. The local board shall retain those cards indicating a place of residence within the area of the local board, and dispose of other cards as provided in section 1613.43."

32 C. F. R. 1613.43 provides in part:

"(a) If the local board finds that the place of residence of the registrant as shown on line 2 of his Registration Card is not within its area but is within its State it shall immediately mail the Registration Card of such registrant to the local board having jurisdiction of the place of residence if it is absolutely sure which local board has jurisdiction. If the local board has any doubt as to which other local board has jurisdiction or if the place of residence is not within its State, it shall mail such card to the State Director of Selective Service."

A presumption of regularity attaches to official proceedings and acts of Selective Service Boards, and appellant admits this, while claiming the presumption was rebutted by evidence that there are four boards in Fresno. (App. Br. p. 23.) Applying the presumption of regularity to the instant case in light of the above quoted Selective Service Regulations, the only conclusion that can be drawn is that appellant's address at the time he registered for the draft was within the territorial jurisdiction of Board 71. The fact that there are four local boards in Fresno, does not rebut this presumption.

VI.
CONCLUSION.

1. Appellant did not exhaust his administrative remedies.

2. Appellant was not entitled to judicial review of his classification.

3. There is a basis in fact for appellant's classification.

4. The jurisdiction of Board 71 over appellant was established.

5. There were no errors in law in the trial court.

6. The verdict of the trial court should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

LLOYD F. DUNN,
Assistant U. S. Attorney,
Chief, Criminal Division,

THOMAS R. SHERIDAN,
Assistant U. S. Attorney,

Attorneys for Appellee.